

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SAMUEL M. McGOWAN,)	
)	
Plaintiff,)	
)	
v.)	No. 4:04CV8 TIA
)	
ST. LOUIS AIRPORT HILTON)	
HOTEL, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Suggestion of Death Filed October 8, 2004. The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

On January 6, 2004, plaintiff filed a pro se complaint in federal court. On March 24, 2004, the undersigned granted plaintiff's motion for appointment of counsel. That attorney filed an amended complaint on April 7, 2004. Due to a conflict of interest, the court appointed new counsel on July 28, 2004. On October 8, 2004, counsel filed a Suggestion of Death of Plaintiff and requested additional time to file a motion for substitution and an amended complaint. On November 8, 2004, counsel filed an additional motion for extension of time, indicating that Mr. McGowan's estate had not been opened, a representative had not been appointed, and plaintiff's wife did not wish to pursue the action. However, counsel wanted to give the family members the full 90 days to find a substitute under Federal Rule of Civil Procedure 25(a)(1). The 90 days expired on January 6, 2005, and counsel has not filed a motion for substitution of party.

Under Rule 25(a)(1), "[u]nless the motion for substitution is made not later than 90 days after the death is suggested . . . the action shall be dismissed as to the deceased party. Because the 90 days

have expired, the undersigned will dismiss plaintiff's action.

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED**.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE

Dated this 12th day of January, 2005.